NO. 82-1231

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MOZELL AND DELORES BROOKS, ET AL,
Petitioners,

v.

WALKER COUNTY HOSPITAL DISTRICT,
ET AL,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether the District Court correctly exercised its discretion in invoking the *Pullman* abstention doctrine in that the applicable Texas constitutional provision at the nub of the controversy does not expressly create an entitlement and is both unclear and unconstrued.

SUBJECT INDEX

LIST OF AUTHORITIES

CASES

UNITED STATES CONSTITUTION

TEXAS CONSTITUTION

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The Respondents, WALKER COUNTY HOSPITAL DISTRICT, ET AL, respectfully pray that Petitioners' Writ of Certiorari to review the judgment and the opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on October 4, 1982, for which rehearing and rehearing en banc were denied on October 28, 1982, be denied.

ARGUMENT

A. The Opinion of the Fifth Circuit Court in the Case at Bar and the Opinion of the Eighth Circuit Court in *Moe v. Brookings County*, 659 F.2d 880 (8th Cir. 1981) are not in conflict.

The case at bar and *Moe v. Brookings County*, supra, are significantly distinguishable. The *Moe* case involves a very detailed state statutory scheme for benefits for poor persons. The case at bar centers on a broadly written unconstrued state constitutional provision relating to a state political subdivision's assumption of responsibility and powers upon its creation.

The doctrine of abstention as applied in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941) and its progeny require a federal court to refrain from exercising jurisdiction when the case involves a potentially controlling issue of state law that is unclear, and the decision of this issue by the state courts could avoid or materially alter the need for a decision on federal constitutional grounds.

In *Moe*, the Eighth Circuit Court found that the state law in question was not unclear, nor was it farily susceptible of an interpretation that would avoid the need for a decision on constitutional grounds. *Id.* at 883.

In the case at bar, the appellate court affirmed the trial court's findings (and exercise of *Pullman* discretion) in determining that the applicable state constitutional provision was ambiguous. *Brooks v. Walker County Hospital District*, 688 F.2d 334.

As Petitioner points out in Petitioner's brief, the two courts clearly made different findings in the two cases

with respect to the existence of an entitlement (at p. 6, Petition for Writ of Certiorari). The Fifth Circuit Court in the instant case was unable to conclude that any clear cut entitlement in favor of Petitioners was created by virtue of the unclear state constitutional provision. The Court did assume "arguendo" that Tex. Const., Art. IX, § 9 created some constitutionally protected entitlement of uncertain scope and extent and nevertheless found abstention proper. However, the Eighth Circuit in *Moe* apparently found that an entitlement program was clearly created by the statutory scheme and that the lack of standards in the scheme gave rise to a federal constitutional claim.

Petitioners have construed the constitutional language at issue and its enabling legislation as conferring directly upon them an unlimited right "to free medical services." The nature, scope, level and manner of providing medical services is nowhere addressed in the broad constitutional language. Petitioners cite no state directives by statute or court decisions expanding, interpreting, or otherwise implementing this provision.

This Court recognizes many fundamental rights and has protected them with "due process" protection. The Court has never recognized any kind of fundamental right to "free medical care" as requested by Petitioners who are seeking here due process for entitlements that clearly do not exist.

No "protected property right" exists by virtue of state law here. A property interest in a benefit arises only when a person has a legitimate claim of entitlement to the benefit. *Board of Regents v. Roth*, 408 U.S. 564 (1972). Were the benefits contemplated here by the constitution

more clearly defined by statute and any regulations implementing them, a "claim of entitlement" may arise. Here, as in *Roth*, there are no statutory or administrative standards defining the interest i.e., "free medical services" or their scope or nature.

Before the Fourteenth Amendment protection arises, the interest for which protection is sought must be determined to rise to the level of a legitimate claim of entitlement. *Memphis Light & Gas Co. v. Craft*, 436 U.S. 1 (1978). Appellants here have not "legitimate claims of entitlement" but only "mere expectations". In *Griffith v. Detrich*, 603 F.2d 118 (9th Cir. 1979), 445 U.S. 970 (1980), the Ninth Circuit Court held that a claim of entitlement arose when a state statute governing benefits was coupled with implementing regulations in such a way that an individual could have more than a unilateral expectation of receiving benefits. In finding a legitimate claim of entitlement in *Griffith*, the Ninth Circuit Court held that the authorizing statute along with the implementing regulations created protectable property rights.

Even if the constitutional language created something more than a mere expectation, as the Fifth Circuit Court noted in their holding in the case at bar, abstention would be proper. The court citing among others, *Mathews v. Eldridge*, 424 U.S. 319 (1976), noted that "it is an axiom of due process jurisprudence that the type of process which is due turns upon the nature of the entitlement and an analysis of the governmental and private interests affected." *Brooks v. Walker County Hospital District*, supra, 688 F.2d at 334.

Petitioners misread the holding of the Fifth Circuit Court in reciting that the Court labeled the entitlement

provision unclear. The two courts reached an opposite result not because they found two clear entitlements with the details of scope each unclear, but because they reached different decisions as to whether or not any entitlement clearly existed.

B. The Decision of the Fifth Circuit in this Case at Bar is not in Direct Conflict with *Baggett v. Bullitt*, 377 U.S. 360 (1964) or any other Decision of this Court.

Baggett, supra, correctly applied the *Pullman* abstention to an unconstitutionally vague loyalty oath statute. The Court refused to abstain automatically because of alleged vagueness in that the statute could not reasonably be construed in such a manner to avoid or fundamentally alter the constitutional issue. This Court concluded that any reasonable construction of the statute in question invaded constitutionally protected activity.

In applying *Pullman*, the Court in *Baggett* first noted that:

> The abstention doctrine is not an automatic rule applied whenever a federal court is faced with a doubtful issue of state law; it rather involves a discretionary exercise of a court's equity powers. Id at 375.

Citing *Propper v. Clark*, 377 U.S. 472, the Court went on to note that the determination as to whether the special circumstances exist to apply these equity powers must be on a case-by-case basis. The Court simply found here that the special circumstances did not exist. The Court here noted that the uncertain issue of state law was vague,

and as such, open to a number of interpretations and that there was no question that the oath applied to the activities of the parties to the suit. The Court's decision turned on whether the challenged statute's resolution in a particular manner would eliminate the constitutional issue.

The rule of *Baggett* then is that abstention is not automatically required if a vagueness claim is urged, but that inquiry must be made as to whether or not the uninterpreted vague statute is fairly subject to an interpretation which will avoid or modify the federal question. In the instant case, the unclear constitutional provision is capable of determination by Texas courts which will moot the federal constitutional claim.

C. The Holding of the Fifth Circuit does not Distort the Abstention Doctrine.

The doctrine of abstention as applied in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), is based upon "the avoidance of needless friction" between federal pronouncements and state policies. In *Pullman*, the Supreme Court held that when a federal constitutional claim is premised on an unsettled question of state law, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state law question and thus avoid unnecessarily deciding a constitutional question.

Though a narrowly applied doctrine, abstention is applied at times where unclear and unconstrued state statutes are critical to the merits of a § 1983 action. *Devlin v. Sosbe*, 465 F.2d 169 (1972). The doctrine is particularly applicable where the "nub of the whole controversy is in the interpretation of the state constitution." *Reetz v. Bozanich*, 397 U.S. 82 at 87 (1970).

In reaffirming the language of *City of Meridian v. Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959), this Court in *Reetz v. Bozanich*, 397 U.S. 82 (1970) at 89, stated that:

> Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided by state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. . . . Here, the state law problems are delicate ones, the resolution of which is not without substantial difficulty, certainly for a federal court. . . . In such a case, when the state court's interpretation of the statute . . . may obviate any need to consider it . . . the federal court should hold its hand lest it render a constitutional decision unnecessarily. (interior quotations omitted)

The interpretation of the Texas state constitution is and its relationship to the enabling statutes is most appropriately left to the courts of the state. *Harris County Commissioners Court v. Moore*, 420 U.S. 77 (1975). In reaffirming *Reetz v. Bozanich*, supra, the Supreme Court in *Harris County Commissioners Court*, supra, 420 U.S. 77 (1975) the Court noted:

> Among the cases that call most insistently for abstention are those in which the federal constitutional challenge turns on state statute, the meaning of which is unclear under state law. If state courts would be likely to construe the statute in a fashion that would avoid the need for federal constitutional ruling or otherwise significantly modify the federal claim, the argument for abstention is strong. Id at 85.

The wisdom and *Pullman* equity of having a state court interpretation would especially seem the better course when Petitioners were not attacking the constitutionality of a provision, but trying to fall within its coverage as they are in the case at bar. Unlike many of the *Pullman* progeny, there is no constitutional attack on a statute here. The Petitioners are seeking to enforce rights claimed under a state constitutional provision. The State is not a hostile party as the State is not being challenged. If federal courts can abstain in cases where the state is challenged, it seems that the equity of abstention would be even more appropriate when the complaint is one of enforcement of rights claimed pursuant to an alleged state constitutional entitlement.

As was noted in the leading case of *Huffman v. Pursue Ltd.*, 420 U.S. 592 (1975) at 603:

> The seriousness of federal judicial interference with state civil functions has long been recognized by this Court. We have consistently required that when courts are confronted with requests for relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence.

In expanding *Huffman*, the Court in *Moore v. Sims*, 442 U.S. 415 (1979) notes that "state courts are the principal expositors of state law". *Sims* involved the delicate area of family relations, a traditional area of state concern. Respondents assert that the situation in the case at bar is not unlike *Sims* in that the area of concern here (health care of indigents) is traditionally a matter of state concern, and therefor, most appropriate for state adjudication.

CONCLUSION

Respondents respectfully request that the Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit be denied; and that the judgment below be affirmed.

Respectfully submitted,

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